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HOUSE BILL 1375

By Kent

DRAFT: 1/8/01

AN ACT to amend Tennessee Code
Annotated, Title 26,
Chapter 2, Part 2,
relative to garnishment
of state officers and
employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 26-2-221 is
amended by deleting the section in its entirety and by
substituting instead the following:

Garnishment of salaries, wages or other compensation due from
the state, or from any county or municipality, to any officer or
employee thereof, is permissible. Notwithstanding any other
provision of law to the contrary, nothing set forth herein shall
be construed to apply to or to allow garnishments of state

payments to contractors or vendors of the State. No such officer or employee may validly claim any privilege or immunity in that regard. Such officer or employee shall be entitled to an exemption of the amount of wages, salary, or compensation so due as is exempt from levy or garnishment in favor of officers or employees of private corporations in like circumstances.

SECTION 2. Tennessee Code Annotated, Section 26-2-222 is amended by deleting the section in its entirety and by substituting instead the following:

(a) In case of garnishment of officers or employees of the state, garnishment notice may issue from any court or any court of record and shall be served upon the fiscal officer in the department in which the garnisheed officer or employee works, and also upon the commissioner of that department in which such officer or employee shall be engaged, or with which he or she is connected. The date of service shall be the date upon which service upon both the commissioner and fiscal officer has been accomplished. If such garnishment is not served as set forth above, such service shall be considered ineffective, and the state shall not be liable for any sums due thereunder. Such fiscal officer is directed to make answer to such garnishment

notice or summons, stating the compensation, if any, due any state officer or employee so garnisheed. Notwithstanding any provision of law to the contrary, the state shall have thirty-one (31) days to submit such answer to the court. Such fiscal officer is directed to withhold any amounts then due the state officer or employee up to and including the amount of the judgment and costs on which the garnishment proceedings were predicated, until the garnishment is released by the issuing court or such funds are paid into that court, as provided by law, and is directed to pay to such officer or employee any amount or sum which may be due such officer or employee above the amount of such judgment and costs, or if applicable, above the amount of each periodic payment made from successive pay periods. In addition to the amount of the disposable earnings subject to garnishment, the state shall be entitled to retain a five-dollar administrative fee from amounts due the judgment debtor for each payment made to the court. The time at which the garnishment lien attaches to the amounts due the state officer or employee shall be seven (7) business days from the date of service of the garnishment.

(b) If the fiscal officer in the department in which the officer or employee works, or the fiscal officer's duly authorized agent or attorney, fails to appear and answer such

garnishment, it shall be presumed that the state is indebted to the officer or employee to the full amount of the judgment creditor's demand, and thereupon a conditional judgment may be entered against the state for the full judgment amount.

(c) After the entry of such conditional judgment a scire facias shall issue to the fiscal officer and to the commissioner of the department in which the garnisheed officer or employee works, returnable to the next term of the court or to a day and place fixed by the court, to show cause why final judgment should not be entered against the state.

(d) Upon the return of such scire facias, fully served upon the fiscal officer and the commissioner of the department in which the garnisheed officer or employee works, and upon the failure of the state to appear and show cause, the conditional judgment against the state shall be made final. In such event, the fiscal officer is directed to pay any such judgment and deduct the amount thereof from wages or salaries owing to such officer or employee garnisheed under this part. Notwithstanding the foregoing, in any case in which judgment is obtained under the provisions of this section, if there are no wages due such officer or employee so garnisheed, such judgment against the state shall be void and unenforceable.

(e) Nothing set forth herein shall be construed to apply to or allow garnishments of state payments to contractors or vendors of the state.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall be effective upon becoming a law, the public welfare requiring it.